319

SUPREME COURT OF THE UNITED STATES.

No. ~~222.~~ 1044.

GARDNER P. DRURY, APPELLANT,

vs.

THOMAS FOSTER AND HANNAH C. FOSTER, HIS WIFE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

GOVERNMENT PRINTING OFFICE.

557

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Citation.

1 UNITED STATES OF AMERICA, *ss:*

To Thomas Foster and Hannah C. Foster, his wife, greeting:

Whereas Gardner P. Drury has appealed to the Supreme Court of the United States from a final decree lately rendered in the district court of the United States for the district of Minnesota, in a cross suit therein pending, wherein he, the said Gardner P. Drury, was defendant, and you, the said Thomas Foster and Hannah C. Foster, were plaintiffs; and in the original suit therein pending he, the said Gardner P. Drury, being plaintiff, and you, the said Thomas Foster and Hannah C. Foster, and one William L. Banning, being defendants, and has given the security required by law:

You are therefore hereby cited and admonished to be and appear before the said Supreme Court, next to be holden at the city of Washington, in the District of Columbia, on the first Monday in December next, and then and there to answer to said appeal, and to stand and abide such order and decree in the premises as to said court shall seem meet.

Witness the honorable Rensselaer R. Nelson, judge of the said district court for the district of Minnesota, at the city of Saint
2 Paul, in the said district, this 25th day of April, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

R. R. NELSON, *U. S. Judge.*

Service by copy admitted this 25th day of April, 1862.

C. D. GILFILLAN,
Appellees' and Def'ts' Solrs.

Filed April 25, 1862.

Pr. JAS. W. TAYLOR, *Clerk.*
J. N. CORDEZ, *Dep.*

3 UNITED STATES OF AMERICA,
District of Minnesota, ss:

GARDNER P. DRURY
vs.
THOMAS FOSTER and
HANNAH C. FOSTER, his wife, } Original bill.

THOMAS FOSTER and
HANNAH C. FOSTER, his wife,
vs.
GARDNER P. DRURY. } Cross-bill.

Pleas.

Before the honorable Rensselaer R. Nelson, judge of the district court of the United States for the district of Minnesota, of the

October term thereof, held at Saint Paul, in and for said district, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-sixth.

4 DISTRICT OF MINNESOTA, *ss:*

Be it remembered, that on the first day of April, in the year of our Lord one thousand eight hundred and sixty-one, came Thomas Foster and Hannah C. Foster, his wife, by C. D. Gilfillan, their solicitor, and filed in the clerk's office of said court at Saint Paul, in said district, their cross-bill of complaint in the following, to wit:

To the honorable the judge of the district court of the United States for the district of Minnesota, sitting in equity:

Thomas Foster and Hannah C. Foster, his wife, of Saint Paul, in the State of Minnesota, and citizens of the State of Minnesota, bring this, their cross-bill of complaint, against Gardner P. Drury, of Boston, in the State of Massachusetts, and a citizen of said
5 State. And thereupon your orators complain and say, that Gardner P. Drury, the defendant above named, on or about the 27th day of February, A. D. 1861, filed his bill of complaint in this honorable court against your orators and William L. Banning and Edward F. Parker, as defendants, which said bill of complaint charges, among other things, that your orators, on or about the 27th day of April, 1857, jointly executed, acknowledged, and delivered, to said Gardner P. Drury, the complainant therein, a mortgage deed, bearing date on said last-named day and year, whereby they (your orators) granted, bargained, sold, and conveyed unto said Gardner P. Drury, and to his heirs and assigns forever, all that tract or parcel of land, with the appurtenances, lying and being in the (then Territory) present State of Minnesota, described as follows, to wit:

Lots six (6) and seven (7) and the southwest quarter of the southeast quarter in section No. twenty-seven, (27,) in township No. one hundred and fifteen (115) north, of range No. seventeen (17) west, in the Redwing land office; that said mortgage was, on the 25th day of May, 1857, at ten o'clock in the forenoon, duly recorded as a mortgage in the office of the register of deeds in and for the said county of Dakota, in book "D" of mortgages, on pages
6 188, 189, & 190, and that said mortgage, grant, and conveyance, was upon this condition: That if these, your orators, their heirs, executors, administrators or assigns, should well and truly pay or cause to be paid to the said Gardner P. Drury, his heirs, executors, administrators, or assigns, the sum of twelve thousand seven hundred and eighty-five dollars and forty cents, according to the conditions of five promissory notes, bearing even date with said mortgage, made by your orator, Thomas, then said mortgage, grant, and conveyance should be null and void; otherwise to be and remain in full force and effect, and which bill of complaint is brought for the purpose of foreclosing said pretended mortgage, and prays, as against these your orators, that the defendants therein may, if they can, show why the complainant shall not

have the relief therein prayed, and may without oath, their answer under oath being thereby waived, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises therein; and that the usual decree may be made for the sale of the said premises, and for the payment
7 of the amount due and to become due to the complainant therein, for the principal and interest aforesaid, and for certain moneys therein alleged to have been paid for taxes and costs and disbursements of suit; and that the defendants therein, and all persons claiming under them or either of them, subsequent to the commencement of said suit, and all persons who have any lien thereon by judgement, decree, or otherwise, subsequent to the commencement of said suit, may be forever barred and foreclosed of and from all right and equity of redemption, and of all lien and interest in and upon said premises, and every part and parcel thereof, and that said complainant therein may have such other or further relief, or both, in the premises as the nature of the case may require, and as may be agreeable to equity; and also prays for the writ of subpœna, commanding the defendants therein, at a certain day, and under a certain penalty, in said writ to be specified, personally to be and appear before your honor in this court, and then and there stand by and abide such order and decree therein as to your honor
8 shall seem meet.

And thereupon such writ of subpœna was duly issued, pursuant to said prayer of said bill of complaint, commanding the defendants therein personally to appear before your honor in this court, to answer to said bill of complaint, on the first Monday of April, then next ensuing, (being the first Monday of April, A. D. 1861;) and after the filing of such bill of complaint, your orators were duly served with said writ of subpœna, but they have not, nor has either of them, answered, pleaded, nor demurred to said bill of complaint, or any part thereof.

And the said cause is still pending and has not yet been heard, and the time for your orator to appear and answer unto said bill of complaint has not yet arrived.

All of which matters and things, reference being had to the said bill of complaint, subpœna, and other proceedings in the cause now remaining filed, as of record in this honorable court will more fully appear.

And your orators, further complaining, say that Hannah C. Foster, one of your orators, never at any time, either jointly or alone,
9 executed, acknowledged, or delivered to said Gardner P. Drury the said pretended mortgage, or any mortgage upon the said described real estate, or any part thereof, or upon any other real estate.

But your orators aver the fact to be, that on the 27th day of April, 1857, and for a long time before and ever since your orators were and now are husband and wife, and on said day, and for a long time before and ever since the said Hannah C. was and now is the owner

in fee simple in her own right, as her separate estate and property, of the whole of the real estate mentioned and described in said bill of complaint, and hereinbefore mentioned and described. That on or about said day the said Thomas Foster proposed and intended to borrow, upon mortgage of said real estate, the sum of six or seven hundred dollars, and proposed to said Hannah C. that she should execute with him a mortgage upon said real estate for the purpose of securing such loan if made. That on said day a paper was prepared by said Thomas in the form of a blank mortgage deed
10 by your orators upon said real estate, but without the name of any mortgagee or grantee, or any consideration or sum of money, or time of payment, or any condition whatsoever being stated therein, which said paper, on said 27th day of April, 1857, at Hastings, in the county of Dakota and Territory of Minnesota, was brought to said Hannah C. by one A. M. Hayes, then a notary public in and for said Territory, who then and there presented the same to said Hannah C. and importuned and solicited her to sign her name, to seal and acknowledge the same. And thereupon she, supposing that the same was to be used only for the purpose of procuring a loan of six or seven hundred dollars as aforesaid, did sign her name to, seal, and acknowledge the same before said notary public. And said notary public and one other person did subscribe their names as attesting witnesses thereto, and said Thomas did then and there in like manner sign his name to, seal, and acknowledge the same ; and thereupon said notary public, in due form of law, wrote and signed, as such
11 notary, upon said paper the usual certificate of acknowledgement, the said paper being then and there in blank as aforesaid, without the name of any mortgagee or grantee, or any consideration or sum of money or time of payment, or any conditions whatsoever being stated therein.

And afterwards, to wit, on the 21st day of May, 1857, at the city of Saint Paul, in the county of Ramsey, in said Territory, the said Thomas negotiated with the said Gardner P. Drury the loan mentioned in said bill of complaint, to wit, the loan of eight thousand five hundred dollars, for the term of two years from the 27th day of May, 1857, upon interest at the rate of twenty-five per cent. per annum, from and after the 21st day of May, 1857; and said sum, having been advanced and loaned by said Gardner P. Drury to said Thomas, said Thomas then and there executed to said Drury his five several promissory notes for the payment of said principal sum and said interest, according to the terms of said loan, the amount of said principal and interest for said two years, and the amount for which said notes were drawn, being the sum of twelve thousand seven
12 hundred and eighty-five dollars and forty cents; and on such negotiation, the said Thomas, having in his possession the said paper in blank as aforesaid, signed, sealed, and acknowledged as aforesaid, did, at St. Paul aforesaid, on said 21st day of May, 1857, deliver the same to said Gardner P. Drury, without the knowledge, privity, or consent of said Hannah C., and then and there, either immediately before or immediately after such delivery, but whether

immediately before or immediately after, said Thomas does not now recollect, and said Hannah C. does not know and never knew, some person other than either of your orators, but the name of which person the said Thomas does not now recollect, and said Hannah C. does not know and never knew, but without the knowledge, privity or consent of the said Hannah C., filled the said blanks in said paper by writing and inserting therein the name of said Gardner P. Drury, as grantee or mortgagee therein, and the sum of twelve thousand seven hundred and eighty-five dollars and forty cents as the
13 consideration thereof, and the condition that the same should be void, if your orators should well and truly pay or cause to be paid to the said Gardner P. Drury, his heirs, executors, administrators or assigns, the said sum of twelve thousand seven hundred and eighty-five dollars and forty cents, according to the condition of said promissory notes; otherwise to be and remain in full force and effect. That there were no subscribing witnesses to said delivery, nor to the filling up of said blanks as aforesaid, and the execution of such paper was never, after such delivery or the filling up of the said blanks as aforesaid, acknowledged by the said Hannah C. And said paper never was delivered to said Gardner P. Drury, or any other person, by the said Hannah C., nor by any person for her, or by her authorized to deliver the same as a deed or mortgage, and the said blanks in said paper were not filled up as aforesaid by her, nor by any other person for her, or with her authority, knowledge, privity, or consent, and she has never in any manner assented to, affirmed, or ratified such delivery or filling up of such blanks.
14 And at the time of the delivery of said paper and the filling up of the blanks therein, and at the time of the loaning by said Gardner P. Drury to said Thomas of the aforesaid sum of money, the said Drury well knew that said paper was signed, sealed, and acknowledged by said Hannah C. in blank, as aforesaid, and that the same was not delivered, nor said blanks filled up as aforesaid by her, nor by any other person by her authorized, or with her knowledge, privity, or consent. Nevertheless the said Gardner P. Drury did receive said paper, and afterwards, on the 25th day of May, 1857, caused the said paper, the blanks being filled up as aforesaid, to be recorded as a mortgage against both your orators in the office of the register of deeds of said county of Dakota, in book "D" of mortgages, on pages 188, 189 and 190, and the same remains a cloud and apparent incumbrance upon the title of said Hannah C. to said real estate. And the said paper, so signed, sealed, acknowledged, delivered and filled up as aforesaid, is the same pretended mortgage mentioned and described in said bill of complaint, and none other or
15 different.

That the money loaned by said Drew to said Thomas was not borrowed nor used for her benefit, nor with her privity or knowledge, and the said paper is now held and in possession of the said Gardner P. Drury, who claims that the same is a valid mortgage and lien as against the title of said Hannah C. on said real estate. That said real estate is of great value, and the acts and doings of the said Gard-

ner P. are contrary to equity and good conscience, and tend to the injury and oppression of the said Hannah C.

And your orators further say, that an answer to said bill of complaint has been prepared by them to be filed, wherein is alleged the foregoing facts; but your orators cannot fully answer to said bill, nor fully establish the defence of said Hannah C. thereto, without an opportunity to inspect the said paper now in possession of said Gardner P. Drury, or in the hands of his solicitors and under his control, because they do not know by whom the blanks in said paper were filled up as aforesaid, and it is essential and necessary for your ora-
16 tors to know by whom such blanks were filled up, in order to enable them to prove that such person was not authorized by said Hannah C. to fill up the same. And they verily believe, and therefore aver, that by an inspection of the handwriting in which said blanks in said paper were filled, they will be enabled to know by whom they were filled.

And your orators have, by their agents and attorneys, made application to the solicitors of said Gardner P. Drury, in whose hands said paper now is, the said Gardner P. Drury not being within the State of Minnesota, for leave to see and examine said paper, and such leave was refused, and your orators have been unable to see and examine the same.

In consideration whereof, and forasmuch as your orators cannot, upon said bill of complaint and answer in said suit, obtain for said Hannah C. the relief to which she is in equity and justice entitled, and forasmuch as your orators cannot well establish the defence of said Hannah C. to said bill of complaint, without the produc-
17 tion and inspection of said pretended mortgage deed mentioned and described in said bill of complaint:

And to the end, therefore, that the said Gardner P. Drury may, if he can, show why your orators should not have the relief prayed, and may without oath, his answer under oath being hereby waived, and according to the best and utmost of his knowledge, remembrance, and belief, full, true, direct, and perfect answers make to all and singular, the premises aforesaid. And that the said Gardner P. Drury may deposit with the clerk of this honorable court at his office the said pretended mortgage deed mentioned and described in said bill of complaint, to be examined and inspected by your orators and their solicitors, and for the usual purposes. And that the said pretended mortgage deed may, as against the said Hannah C., and as against her title to and interest in said real estate, be adjudged and decreed null and void; and may, as against said Hannah C., and her said title and interest, be set aside, cancelled, and discharged. And that
18 your orators may have for said Hannah C. such other or further relief, or both, in the premises as the nature of the case may require, and as may be agreeable to equity, with their costs and disbursements herein.

May it please your honor to grant unto your orators the writ of subpœna of the United States of America, issued out of, and under the seal of, this court, directed to the said Gardner P. Drury, commanding

him at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your honor in this court, and then and there stand by and abide by such order and decree therein as to your honor shall seem meet.

And your orators shll ever pray, &c.

C. D. GILFILLAN,
Solicitor for Complainants.
JAMES GILFILLAN,
of Counsel.

ST. PAUL, *March 30th*, 1861.

STATE OF MINNESOTA,
County of Ramsey, ss:

19 On this 1st day of April, A. D. 1861, before me personally appeared the above-named Thomas Foster, and made oath that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on the complainants' information or belief, and as to those matters he believes it to be true.

THOMAS FOSTER.

Subscribed and sworn to before me this 1st day of April, A. D. 1861.

GEO. W. PRESCOTT, *Clerk.*

I certify that I have perused the within cross-bill, as well as the original bill filed in this cause, and I am of the opinion that the within bill is not intended for delay, and that a stay of proceedings in the original suit is necessary for the attainment of justice in this cause.

Dated St. Paul, April 1, A. D. 1861.

JAMES GILFILLAN, *Counsel.*

20 And thereupon, on application of said solicitor, a writ of subpœna was duly issued, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Minnesota:

[SEAL.] *The President of the United States to Gardner P. Drury, greeting:*

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the district of Minnesota, in our court of chancery in and for the district aforesaid, on the first Monday of May next ensuing, at the city of St. Paul, in said district, to answer to a cross-bill of complaint exhibited against you, in our said court, by Thomas Foster and Hannah C. Foster, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said
21 Gardner P. Drury, if to be found in his district, and due return thereof make.

Witness the Hon. Rensselaer R. Nelson, judge of the said district court of the United States, at the city of St. Paul, in the said district of Minnesota, this first day of April, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

GEORGE W. PRESCOTT, *Clerk.*
C. D. GILFILLAN,
Plaintiffs' Solicitor.

Memorandum.

The defendant served in this action is hereby notified to enter his appearance in this suit in the clerk's office, at said St. Paul, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

And which said process of subpœna was duly tested, signed,
22 and sealed with the seal of our said court, and which said process of subpœna was subsequently returned to the said clerk's office by the marshal of the district of Minnesota, endorsed as follows, to wit:

DISTRICT OF MINNESOTA, *ss:*

I hereby certify that I have made dilligent search and inquiry, and have not been able to find the within-named Gardner P. Drury in my district.

WM. B. GERE,
U. S. Marshal.

April 5th, 1861.
Fees, $1 00.

And afterwards, to wit, at rules held in the said clerk's office, on the sixth day of May, in the year of our Lord one thousand eight hundred and sixty-one, came the said defendant, Gardner P. Drury, by Hale and Bond, his solicitors, and on whose motion it is ordered that the appearance of said defendant, summoned to answer the cross-bill of said Foster and wife, be, and it is hereby, entered.

And afterwards, to wit, at rules held in the said clerk's
23 office, on the first day of June, in the year one thousand eight hundred and sixty-one, the following proceeding, among others, was had, to wit:

GARDNER P. DRURY
vs.
THOMAS FOSTER & wife *et al.* } Original bill.

THOMAS FOSTER & HANNAH C. FOSTER, his wife,
vs.
GARDNER P. DRURY. } Cross-bill.

It is hereby ordered that the defendant, Drury, in the action last above entitled, have till the first Monday in July next, to answer the

cross-bill of complaint of the plaintiffs in said action, pursuant to the stipulation of the parties to said action hereto annexed.

Dated St. Paul, 1st June, 1861.

R. R. NELSON,
U. S. Dist. Judge.

A true record. Attest:

GEO. W. PRESCOTT, *Clerk.*

And afterwards, to wit, on the first day of July, in the year
24 one thousand eight hundred and sixty-one, came the said defendant, Gardner P. Drury, by Hale & Bond, his solicitors, and filed in the clerk's office of said court, at said St. Paul, his answer to the said plaintiffs' cross-bill of complaint in words and figures following, to wit:

District Court of the United States for the District of Minnesota.

The answer of Gardner P. Drury, defendant, to the cross-bill of complaint of Thomas Foster and Hannah C. Foster, his wife, complainants.

This defendant, reserving to himself all right of exception to the said cross-bill of complaint, for answer thereto, admits that this defendant did, on or about the 27th day of February, A. D. 1861, as in said cross-bill in that behalf stated, file his bill of complaint in this court against the said complainants, and one William L. Banning, and one Edward F. Parker, as defendants, of the purport and effect and for the purpose in said cross-bill set forth.

And he admits that a writ of subpœna was duly issued out
25 of this court, pursuant to the prayer of this defendant, said bill of complaint of the purport and effect in said cross-bill stated, and that said writ of subpœna was duly served on the said complainants, as in said cross-bill in that behalf is alleged.

And this defendant admits that at the time of the filing of said cross-bill the said complainants had not, nor had either of them, answered, pleaded, or demurred to this defendant's said bill of complaint, or any part thereof, and that said cause was then still pending, and had not yet been heard, and that then the time for said complainants to appear and answer the said bill had not yet arrived, as in said cross-bill in that behalf is stated.

And this defendant saith that it is not true, as the said complainants hath in their said cross-bill in that behalf stated, that the said complainant, Hannah C. Foster, never at any time, either jointly or alone, executed, acknowledged, or delivered to this defendant the said mortgage, in this defendant's said bill of complaint described and set forth, or any mortgage upon said real estate, or any
26 part thereof: but, on on the contrary thereof, this defendant saith, and avers the truth to be, that the said Hannah C. Foster, jointly with her said husband, the said Thomas Foster, did

execute, acknowledge, and deliver to this defendant the certain mortgage mentioned and described in this defendant's said bill of complaint at the time, and of the purport and effect and for the purpose in said bill of complaint in that behalf stated; to which bill of complaint this defendant craves leave to refer for greater particularity and certainty in said behalf.

And this defendant admits that at and during the time, in that behalf mentioned in said cross-bill, the said complainants were husband and wife.

And this defendant saith that, except as he is informed by said cross-bill, he has no knowledge that the said Hannah C. Foster was at and during the time in said cross-bill mentioned, and is now, the owner in fee simple in her own right, as her seperate estate and property, of the whole of the real estate, or of any part
27 thereof, mentioned and described in this defendant's said bill of complaint; but this defendant saith that, he has good reason to believe, and does verily believe, and so charges the truth to be, that the aforesaid real estate, although the title thereof may now stand, and may heretofore have stood, in the name of the said Hannah C. Foster, is, and was at the time of the execution of said mortgage, and has always been in truth and in fact, the property of the said Thomas Foster, and that if the title of said real estate has heretofore stood, and does now stand, in the name of the said Hannah C. Foster, the same has been so held, and is now so held, by her solely in trust and for the use, benefit, and behoof of the said Thomas Foster.

And this defendant saith that, except as he is informed by said cross-bill, he has no knowledge whether or not the said Thomas Foster, at the time in said cross-bill mentioned, did propose and intend to borrow upon mortgage of said real estate, the sum of six
28 or seven hundred dollars, and did propose to said Hannah C. Foster to execute with him a mortgage upon said real estate for the purpose of securing such loan if made. And that, except as he is informed by said cross-bill, he has no knowledge whatever as to the preparation of a mortgage upon said real estate in blank as in said cross-bill in that behalf is stated. And has no knowledge whatever as to the presentation of the same to the said Hannah C. Foster, and as to her being importuned and solicited to sign, seal, and acknowledge the same, as in said cross-bill in that behalf is stated. And has no knowledge whatever as to the signing, sealing, and acknowledging of the said blank mortgage by the said Hannah C. Foster and Thomas Foster, as in said cross-bill in that behalf is set forth. But this defendant denies that the said blank mortgage, if any such there was afterwards, was ever delivered to this defendant with the blanks filled or otherwise, as in said cross-bill is stated. And he denies that said blank mortgage, if any such there was, is the
29 same mortgage, except only the filling of the blanks therein, set up in this defendant's said bill of complaint. And he denies that the said mortgage in the said bill of complaint set forth was signed, sealed, executed, or acknowledged by the said complainants,

or either of them, in the form, mode, or manner, or under the circumstances in said cross-bill stated. And he denies that said mortgage was ever executed, acknowledged, or delivered otherwise than is stated in this defendant s said bill of complaint.

And this defendant denies that the said Thomas Foster negotiated said loan with this defendant, or executed or delivered said notes to this defendant in manner and form as in said cross-bill the said complainants have in that behalf alleged.

And this defendant denies that the said Thomas Foster on said negotiation did deliver to this defendant said mortgage in blank as the said complainants have in their said cross-bill set forth. And he denies that any blanks were filled, or any word or words, figure
30 or figures, were inserted or written by this defendant, or by any other person, in said mortgage after the delivery thereof to this defendant, as the said complainants in their said cross-bill have in that behalf stated, or otherwise. But, on the contrary thereof, this defendant saith that when the said mortgage in this defendant's said bill of complaint set forth was executed and delivered to this defendant the same contained no blanks whatever, but was in all respects complete and precisely as the same was at the filing of the said bill of complaint, and as the same is therein described and set forth.

And this defendant denies that the said loan was effected, or that the said notes were made or delivered, or that the said mortgage was executed, acknowledged, or delivered in manner and form as the said complainants have in their said cross-bill in that behalf stated, or otherwise than as this defendant has in his said bill of complaint in that behalf set forth.

And this defendant denies that he ever had any knowledge
31 that the said mortgage, or any mortgage or paper, was ever signed, sealed, or acknowledged by said Hannah C. Foster in blank, or that any blanks were filled up therein without her authority, knowledge, privity, or consent, as in said cross-bill in that behalf stated.

And this defendant saith that the said mortgage set up in this defendant's said bill of complaint was in all respects duly executed, acknowledged, and delivered to this defendant by the said complainants for the purposes and in the manner and form in said bill of complaint stated, and with the full knowledge, consent, and approbation of the said Hannah C. Foster, and that she then well knew the purposes aforesaid for which said mortgage was executed.

And this defendant saith that he hath no knowledge for what purpose the said money was borrowed of this defendant, or whether or not the same was borrowed or used for the benefit of the said Hannah C. Foster, but he saith that the same was borrowed and used
32 with the full knowledge and assent of the said Hannah C. Foster.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said cross-bill charged, without this that there is any other matter, cause, or thing in the said complainants' said cross-bill of complaint contained, material or

necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

GARDNER P. DRURY, *Defendant.*
HALE & BOND, *Solicitors for Def't.*
H. R. BIGELOW & ALLIS & PECKHAM,
Of Counsel for Def't.

33 And afterwards, to wit, on the fifth day of August, in the year of our Lord one thousand eight hundred and sixty-one, came the said complainants, and by their said solicitor filed in the said clerk's office of said court at St. Paul, their replication to the said defendant's answer to said cross-bill, in the words and figures following, to wit:

District court of the United States for the district of Minnesota.—In equity.

The replication of Thomas Foster and Hannah C. Foster, his wife, complainants, to the answer of Gardner P. Drury, defendant, to the cross-bill of said Thomas Foster and Hannah C. Foster, his wife.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficien-
34 cies of said answer, for replication thereto, say, that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants: without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

C. D. GILFILLAN,
Solicitor for Complainants.
JAMES GILFILLAN,
Of Counsel.

SAINT PAUL, *August 5th*, 1861.

The foregoing replication may be filed without the signatures of the complainants, with the same force and effect as though such signatures were affixed thereto.

HALE & BOND,
Solicitors for Defendant.

ST. PAUL, *Aug. 5th*, 1861.

35 And afterwards, to wit, at rules held in the clerk's office of said court, on the fifth day of August, in the year of our Lord one thousand eight hundred and sixty-one, the following proceeding, among others, was had, to wit:

GARDNER P. DRURY
vs.
THOMAS FOSTER, HANNAH C. FOSTER, his wife, *et al.* } Original bill.

THOMAS FOSTER & HANNAH C. FOSTER, his wife,
vs.
GARDNER P. DRURY. } Cross-bill.

On motion of the solicitors in this cause, it is ordered that a commission to such person or persons as shall be named by the judge of this court, to take the testimony of such witnesses as shall be
36 produced by the parties herein, upon oral interrogatories by the solicitors of said parties, they hereby agreeing to take said testimony upon such interrogatories.

HALE & BOND,
Solic's for Pl'ffs.
C. D. GILFILLAN,
Solic'r for Def's.

And afterwards, to wit, on the eighth day of August, in the year of our Lord one thousand eight hundred and sixty-one, at rules held in said clerk's office, the following proceeding, among others, was had, to wit:

GARDNER P. DRURY
vs.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, and WM. L. BANNING. } Original bill.

THOMAS FOSTER and HANNAH C. FOSTER, his wife,
vs.
GARDNER P. DRURY. } Cross-bill.

On reading and filing the stipulation of the respective par-
37 ties agreeing thereto, it is hereby ordered, that the time for taking the proofs of the several parties upon the original bill and cross-bill in this cause be, and the same is hereby, extended to the 20th day of August, 1861.

That said original bill and cross-bill be heard together, and that proofs and pleadings in the one cause be read in the other, so far as admissible under the pleadings.

That a commission issue to George W. Prescott, esq., who is hereby appointed a commissioner to take the proofs of the several parties to said original and cross-bills upon oral interrogatories.

That the defendant in said cross-bill and his solicitors are hereby

required to produce and deposit with said commissioner, for the inspection of the complainants in said cross-bill, their solicitor, counsel, and witnesses, the mortgage described in said original
38 bill and said cross-bill and the answer thereto, at such time and place as shall be appointed by said commissioner for taking the proofs of said complainants on said cross-bill.

R. R. NELSON,
U. S. Dist. Judge.

A true record. Attest: JAMES W. TAYLOR, *Clerk.*

And afterwards, to wit, on the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and sixty-one, at rules held in the clerk's office of said court, the following proceeding was had, to wit:

GARDNER P. DRURY
vs.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, and WILLIAM L. BANNING. } Original bill.

THOMAS FOSTER and HANNAH C. FOSTER, his wife,
vs.
GARDNER P. DRURY. } Cross-bill.

On filing the stipulation and agreement to that effect be-
39 tween Hale and Bond, solicitors for complainants in original bill, and for defendant in cross-bill, and of C. D. Gilfillan, solicitor for defendants in original bill, and for the complainants in cross-bill, it is ordered that publication of the testimony taken in these causes do pass in the said clerk's office.

And afterwards, to wit, at rules held in said clerk's office on the fourth day of October, in the year one thousand eight hundred and sixty-one, the following proceeding was had:

GARDNER P. DRURY
vs.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, and WILLIAM L. BANNING. } Original bill.

THOMAS FOSTER *et al.*
vs.
GARDNER P. DRURY. } Cross-bill.

40 And now comes the plaintiff in said original bill, by Allis & Peckham, his counsel, and on their motion it is ordered that these causes be, and they hereby are, set down for hearing at the next term of this court, to wit, October term, 1861; and also ordered that the usual subpœna to hear judgment issue.

And afterwards, to wit, at a stated term of said court, held at Saint Paul, in and for the district of Minnesota, of the October term

thereof, in the year one thousand eight hundred and sixty-one, on the ninth day of said term, the following proceeding, among others, was had, to wit:

GARDNER P. DRURY *vs.* THOMAS FOSTER and HANNAH C. FOSTER, his wife, WILLIAM L. BANNING and EDW'D F. PARKER.	Original bill. Foreclosure of mortgage in chancery.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, *vs.* GARDNER P. DRURY.	Cross-bill.

41 These causes this day came on to be heard upon the bills, answers, and testimony herein.

Whereupon Lorenzo Allis, esquire, solicitor and of counsel for the plaintiff in the original bill, and for the defendant in the cross-bill, moves the court to suppress such portions of the depositions on file in said causes as were received subject to objection for incompetency.

And thereupon, on consideration, it is ordered by the court that the motion heretofore made to suppress such portions of the depositions on file in these causes as were received subject to objection for incompetency, be denied, and that said testimony be received.

And afterwards, to wit, on the nineteenth day of said term, the following proceeding, among others, was had:

THOMAS FOSTER and HANNAH C. FOSTER, his wife, *vs.* GARDNER P. DRURY.	Cross-bill.

42 This cause came on to be further heard at this term, and was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged, and decreed as follows, to wit:

That the alleged mortgage mentioned and described in the cross-bill of complaint herein, to wit, the mortgage or instrument purporting to be a mortgage executed by the said Thomas Foster and Hannah C. Foster to the said Gardner P. Drury, to secure the sum of twelve thousand seven hundred and eighty-five dollars and forty cents, according to the condition of five several promissory notes, dated the 27th day of April, A. D. 1857, and recorded on the 25th day of May, 1857, at 10 o'clock in the forenoon, as a mortgage, in the office of the register of deeds in and for the county of Dakota and State of Minnesota, in book D of mortgages, on pages 188, 189, and 190, and purporting to convey to said Gardner P. Drury all that tract or parcel of land lying and being in the said State, then
43 Territory, of Minnesota and county of Dakota, described as follows, to wit: Lots six (6) and seven (7) and the southwest

quarter of the northeast quarter in section number twenty-seven, (27,) in township number one hundred and fifteen (115,) north of range number seventeen (17) west, in the Red Wing land office district, is null and void as to the said Hannah C. Foster, and is hereby set aside, annulled, and discharged as against the said Hannah C. Foster, and her right, title, interest, or estate in the said real estate hereinbefore described.

R. R. NELSON,
U. S. Dist. Judge.

44 And there are on file in this cause, and endorsed as filed on the 27th day of August, A. D. 1861, the commission and return thereto, and depositions and exhibits in words following, to wit:

The President of the United States to George W. Prescott, esq., greeting:

You are hereby authorized and appointed to take the testimony, in writing, of such witnesses as may be produced before you in the above-named cases, on the original and cross-bills, pending in the district court of the United States for the district of Minnesota, before the judge thereof, pursuant to the following order, to wit:

"On reading and filing the stipulation of the respective parties agreeing thereto, it is hereby ordered."

"That the time for taking the proof of the several parties upon the original bill and cross-bill in this cause be, and the same
45 is hereby, extended to the 20th day of August, 1861."

"That said original bill and cross-bill be heard together, and that proof and pleadings in the one cause be read in the other, so far as the same are admissable under the pleadings."

That a commission issue to George W. Prescott, esq., who is hereby appointed a commissioner to take the proofs of the several parties to said original and cross-bills, upon oral interrogatories.

That the defendant in said "cross-bill and his solicitors are hereby required to produce and deposit with said commissioner for the inspection of the complainants in said cross-bills, their solicitor, counsel, and witnesses, the mortgage described in said original bill and said cross-bill, and the answer thereto, at such time and place as shall be appointed by said commissioners for taking proof of said complainants on said cross-bill."

"R. R. NELSON,
"*U. S. Dist. Judge.*"

"A true record. Attest:

"JAMES W. TAYLOR, *Clerk.*"

You will cause the deposition of witnesses to be signed by them; at the foot thereof you will add a certificate subscribed by
46 yourself, stating that the same were sworn to, and subscribed by said witnesses, and the time and place where the same were taken; which said examination of witnesses so taken, with your certificate thereto attached, you will send directed to our clerk of

our said district court of the United States for the district of Minnesota, at Saint Paul, in said district, sealed with the names of the parties litigant endorsed thereon, on or before the first Monday of October next, together with this suit.

[SEAL.] Witness the Hon. Rensselaer R. Nelson, judge of our said court, at St. Paul, in said district, this 3d day of September, A. D. 1861, and of our independence the 86th.

[SEAL.] JAMES W. TAYLOR, *Clerk.*

DISTRICT COURT OF THE UNITED STATES,
District of Minnesota, ss:

GARDNER P. DRURY
vs.
THOMAS FOSTER & HANNAH C. FOSTER. } Original bill.

47 THOMAS FOSTER & HANNAH C. FOSTER
vs.
GARDNER P. DRURY. } Cross-bill.

DISTRICT OF MINNESOTA, *ss:*

And now, to wit, this (27th) twenty-seventh day of August, Anno Domini eighteen hundred and sixty-one, before George W. Prescott, commissioner in the above causes, at the office of Allis & Peckham, Saint Paul, in said district, come the above parties, by their respective counsel; and thereupon the plaintiff in the cause first above entitled, by his counsel, puts in evidence the papers hereto annexed, marked Exhibit I, II, III, IV, V, respectively, which are admitted by defendants' counsel, to be the notes described in plaintiff's bill of complaint, and in defendants' answer thereto, and also in the cross-bill in the cause secondly above entitled. Puts also in evidence the paper hereto annexed, marked Exhibit "VI," which is by defendants admitted to be the mortgage referred to in the pleadings mentioned.

48 Thereupon A. M. Hayes is produced as a witness on behalf of the plaintiff, and, *and* being by said commissioner first duly sworn, deposes and says, in answer to interrogatories:

I. Are you acquainted with the defendants in this cause, and the grantors in the mortgage shown you? (Exhibit VI here shown to witness.) And if so, how long have you known them?

Answer. I am. I have known them five or six years.

II. Examine the signature "A. M. Hayes," purporting to be one of the witnesses to this mortgage, and state if you know whose signature that is; and if so, whose it is.

Answer. I do know. It is my signature.

III. State if that deed was signed and sealed in your presence by the parties purporting to have signed and sealed it.

Answer. It was.

IV. State if there was any other witness present beside yourself when the deed was so signed and sealed?

Answer. James F. Dicken was present when the grantor, Hannah C. Foster, signed and sealed the deed, and Oren T. Hayes was
49 present when the grantor, Thomas Foster, signed and sealed it.

V. Are the two signatures purporting to be those of James F. Dicken and Oren T. Hayes, witnesses to the deed, the signatures of those two persons, to your knowledge?

Answer. They are.

VI. Did they witness it in your presence after the signing and sealing by the grantors?

Answer. They did.

VII. Do you know where James F. Dicken, one of the witnesses to this deed, is?

Answer. I do not.

VIII. Do you know if James F. Dicken is in the State of Minnesota at the present time, or if he has been in this State within the past five or six months?

Answer. I do not.

IX. After the execution of this deed, as you have mentioned, to whom was it delivered?

Answer. It was delivered to me.

X. Do you recollect to whom you delivered it?

Answer. I think I delivered it to Thomas Foster, one of the grantors. That is my impression, but I cannot state positively whether it was delivered by me or by brother. I can't recollect exactly how it went out of my hands.

50 XI. Examine the acknowledgement on this deed, and state if you know whose signature is affixed to the acknowledgement.

Answer. It is my signature.

XII. Were you a notary public at that time?

Answer. I was.

XIII. Was the seal after your name upon this instrument your official seal at that time?

Answer. It was.

XIV. Was this acknowledgement, to which your name and official seal is annexed, made before you at the time it purports to have been made?

Answer. It was.

XV. Were you requested by the grantors to witness their signing and sealing of the deed at the time you witnessed it?

Answer. I can't say whether I was directly asked, but it was done in their presence, and at their implied request.

Cross-examination by defendants' counsel.

X-ex. I. Where did you live at the time of signing and sealing exhibit "Vi?"

Answer. I lived in Hastings, Dakota county, in this State.

51 X-ex. II. Where did Thomas Foster and Hannah C. Foster live at that time?

Answer. They lived in said Hastings.

X-ex. III. Where was that instrument signed and sealed?

Answer. In said Hastings.

X-ex. IV. Was it signed and sealed by both the grantors at the same time and in the same place?

Answer. It was signed and sealed by both on the same day, but Thomas Foster signed and sealed it at my office, and Hannah C. Foster signed and sealed it at the dwelling-house of Thomas Foster.

X-ex. V. Which signed and sealed first?

Answer. Thomas Foster.

X-ex. VI. By whom was it taken to the dwelling for Mrs. Foster to sign?

Answer. By me.

X-ex. VII. After she signed it, what did you do with it?

Answer. I took it to my office.

X-ex. VIII. How long did you have it at your office after it was signed and sealed?

Answer. I think it was several days, because I think the doctor, after he signed it, went to Saint Paul and remained several
52 days. My recollection is not distinct about it. I mean Doctor Thomas Foster, one of the grantors.

X-ex. IX. Do you recollect whether you delivered it personally to Thomas Foster, or sent it by letter?

Answer. I do not.

X-ex. X. What was it left in your hands for?

Answer. It was left in my hands to deliver to Thomas Foster.

X-ex. XI. While it was in your hands, do you recollect Mrs. Foster calling upon you in regard to it?

Answer. I do not. I don't recollect of ever seeing her about it at all after she acknowledged it. Possibly she might, but I have no recollection of it.

X-ex. XII. Did you subscribe your name to it as witness in Mrs. Foster's presence?

Answer. I think I did.

X-ex. XIII. Do you know in whose handwriting the written part of the deed is?

Answer. Part of it is in my handwriting, and part of it is in the handwriting of the defendant, Thomas Foster.

X-ex XIV. Look at the works "Gardner P. Drury, of Massachusetts," in the fourth line, and state if you know whose handwriting it is.

Answer. I think it was Thomas Foster's handwriting, from
53 what I know of his writing. I did not see him write it.

X-ex. XV. Look at the words "twelve thousand seven hundred and eighty-five $\frac{40}{100}$," on the fifth and sixth lines of the mortgage, and state if you know whose handwriting it is.

Answer. I think it is Thomas Foster's.

X-ex. XVI. Look at the words "Gardner P. Drury," in the twenty-first line, and state if you know whose handwriting they are in.

Answer. I think in Thomas Foster's.

X-ex. XVII. In whose handwriting are the words "twelve thousand seven hundred and eighty-five $\frac{40}{100}$," in the twenty-third line?

Answer. In think in Thomas Foster's.

X-ex. XVIII. In whose handwriting are the words "being five in number," in the twenty-fifth line?

Answer. I think in Thomas Foster's.

X-ex. XIX. In whose handwriting is the word "fifty," in the thirty-eight line?

Answer. Thomas Foster's, I think.

X-ex. XX. Is there any other part of the deed in his handwriting, or in other person's than yourself?

Answer. The word "notes," in lines twenty-five and thirty-one, was written by me, all but the letter "S;" the letter "S" in
54 those two words is the handwriting, I think, of Thomas Foster. The rest of the written portion of the body of the deed is in my handwriting.

X-ex. XXI. State if you know when the portions in the handwriting of Thomas Foster were written. (Objected to as not being matter of X-ex. to any matters elicited in the examination in chief, and also as immaterial.)

Answer. I do not know.

X-ex XXII. State if you know whether those portions were written before the signing and sealing. (Objected to as previous question, and also that the witness can't contradict his own certificate of acknowledgement on the deed.)

Answer. I think they were not.

X-ex. XXIII. Were they written before you delivered the deed to Thomas Foster, after the signing and sealing? (Objected to as above to last quest.)

Answer. They were not, I think. I am quite positive they were not.

X-ex. XXIV. When did you write the part of the deed that is in in your handwriting? (Objected to as above.)

Answer. On the 27th day of April, 1857.

X-ex. XXV. At the time this deed was signed, sealed, and
55 acknowledged, what did Mrs. Foster say about it, if anything? (Objected to as above.)

Answer. She said something like this: that she was fearful the speculation the doctor was going into would not come out right; that she did not like to mortgage that place, but that the doctor wanted to raise a few hundred dollars, or several hundred dollars, or something to that effect—I don't recollect the exact expression she used—and that she did not like to refuse him, so she consented to sign the mortgage. That is the amount of what she said, but I don't recollect her language. I state, as nearly as I can remember, what she said, so as to give the meaning she conveyed.

(This testimony objected to, so far as it is intended to offer declarations of defendant, Mrs. Foster, in evidence.)

Re-direct ex. by plaintiff.

R. D. I. Do you recollect whether you gave the deed to defendant, Thomas Foster, at all?

Answer. I think I gave it to him myself, but am not positive.

A. M. HAYES.

Subscribed and sworn to before me this 27th August, A. D. 1861.

GEO. W. PRESCOTT.
Commissioner.

56 And thereupon plaintiff puts in evidence mortgage deed hereto annexed, marked exhibit "VI;" also offers in evidence the acknowledgement upon it, and the register of deeds certificate endorsed upon the back of it; and defendant admits that same was recorded, according to said certificate upon the back.

Plaintiff rests.

And thereupon defendants introduce their testimony, as follows:

Erastus S. Edgerton, being first duly sworn, says:

I. Do you know the parties in this suit?

Answer. I know the parties to this suit, Gardner P. Drury and Thomas Foster; do not recollect as I know Hannah C. Foster.

II. Did you know Mr. Foster and Mr. Drury in the spring of 1857?

Answer. I think I did; I would not be positive what year.

III. Look at this mortgage and these notes. (Exhibit from I to VI inclusive, heretofore put in evidence, shown witness.) Did you know them at the time this loan evidenced by these notes and mortgage was negotiated?

57 Answer. I knew Gardner P. Drury and Thomas Foster; I don't remember that I knew Mrs. Foster; if I ever did I have forgotten it.

IV. Did you act for either of the parties in negotiating the loan?

Answer. I assisted both parties more or less.

V. Where you present when the papers were delivered?

Answer. I don't recollect; wouldn't be positive; I may and may not have been.

VI. How long had Mr. Drury been here that spring at the time these papers were delivered?

Answer. A few days; don't remember how many.

VII. Do you recollect the fact of this writing being written and signed? Guarranty purporting to be signed by Alex. Ramsey on the back of exhibit VI shown witness. (Objected to by pl'ff's, Drury's, counsel as being impertinent and immaterial.)

Answer. I think I do. (Objected to as not responsive to the question.)

VIII. Do you know how long they were negotiating the loan before the papers were delivered?

58 (Objected to as impertinent and immaterial.)

Answer. A few days; I cannot tell how many.

IX. Was this paper, exhibit VI, in your possession during any of the time?

Answer. I cannot tell.

X. Do you know in whose handwriting the body of these notes is, exhibits I to VI?

Answer. I think it is the handwriting of H. M. Ketcham, who was clerk for me at the time.

XI. Where was the loan negotiated?

Answer. I do not know positively; I recollect Mr. Drury's going to Hasting's, and that is the way I recollect they were a few days negotiating the loan; and I recollect they were in my office, but I couldn't say where it was negotiated.

XII. Do you know what he went to Hastings for?

Answer. I understood he went to look at the property which he was to take a mortgage of; I understood it from Drury or Thomas Foster.

XIII. Where you told that during the negotiation?

Answer. I should think so; yes.

59 XIV. How long after that was the negotiation consummated, by the delivery of the papers?

Answer. I can't recollect; the whole thing is indistinct with me.

XV. Do you recollect taking or sending this exhibit VI for record?

Answer. I do not.

XVI. Did you see this mortgage before the negotiations were completed?

Answer. I may and may not; can't tell.

XVII. Did you see the notes before they were negotiated?

Answer. I don't know anything about it; the only thing I know about it is, they are in the handwriting of my clerk

XVIII. What did you do in assisting the parties in making the loan?

Answer. I had been spoken to in the first place by Thomas Foster to assist him about getting money; this was before Gardner P. Drury came here, or before I knew he had money at all events, for I had tried to get the money of others before Drury spoke to me. Then Gardner P. Drury spoke to me to know who wanted to hire

60 money. I told Thomas Foster that Gardner P. Drury wanted to lend, and told Drury that Foster wanted to hire. That is the substance.

XIX. Is that all you did?

Answer. I probably had conversation with both parties, but can't give the details.

XX. While the negotiation was going on, did you hear anything said between Foster and Drury about the blanks in the mortgage?

Answer. I did not.

XXI. Did you hear any conversation in the presence of Mr. Drury in regard to any blanks in it?

Answer. I don't recollect that I did.

XXII. Do you recollect whether this guaranty was written before the delivery of the notes and mortgage?

(Objected to as impertinent and irrelevant, and that there is no guaranty in evidence.)

Answer. I think it was written before, yet I am not very positive about it.

XXIII. Do you recollect when the money was advanced?

Answer. I do not. It seems strange that I do not, for it is most reasonable to suppose that I should have cashed Drury's
61 drafts; and yet I have not the most distant recollection of it.

XXIV. Were you informed by any person that this mortgage was signed and sealed with the name of the mortgagee, and the amount in blank, before the delivery of it?

(Objected to as indefinite and uncertain, also as impertinent, immaterial, and incompetent evidence.)

Answer. I was.

XXV. State who informed you and what that information was.

(Objected to, for same reasons as above.)

Answer. Thomas Foster; the information was, that he had bro't up a mortgage from home executed in blank, and that he was authorized to fill it out.

XXVI. Did you make any other loan for Foster during that spring?

(Objected to as immaterial.)

Answer. Not that I recollect.

XXVII. Is this book your original book of entry of your daily transactions in spring of 1857? (Book shown witness.)

(Objected to as indefinite, immaterial, and incompetent evidence.)

Answer. It is the original book of entry of the daily trans-
62 actions of Mackubin & Edgerton.

XXVIII. That was the name of your firm engaged in the banking business, was it?

Answer. It was.

Defendants, by their counsel, here offer in evidence from such book of entry the entry under date of May 22, 1857, in the following words and figures:

Profit and loss. Com. ch'g'd Foster for loan, 100.

(Admission objected to as incompetent and immaterial.

X-examined by plaintiff's counsel.

X-ex. I. Did you charge a commission to either Drury or Foster for the negotiation of this loan?

Answer. I have no recollection of charging any, except from this book.

X-ex. II. According to that book, you charged the defendant, Foster, a hundred dollars for the negotiation of this loan, did you not?

Answer. So it appears from this book. I had forgotten it.

X-ex. III. And according to that book the defendant, Thomas Foster, paid you a hundred dollars for negotiating that loan, did he not?

Answer. He did.

X-ex. IV. Did Drury pay you anything, or did you charge him anything for negotiating this loan?

Answer. I do not recollect of charging him anything or of his paying anything.

X-ex. V. Do you find any charge, entry, or memorandum in that book of Mr. Drury's paying you anything, or of his being charged anything by you for negotiating this loan?

Answer. I do not.

X-ex. VI. Have you examined the book for the purpose of finding such charge?

Answer. I have examined the book and do not find the name of Mr. Drury.

X-ex. VII. You have that book now before you, have you not?

Answer. I have. It is the cash-book of Mackubin & Edgerton, and commences July 9th, 1856, and terminates June 10th, 1857.

X-ex. VIII. Is the entry or memorandum which has been
64 given in evidence from that book by defendants' counsel, in your handwriting?

Answer. It is not.

X-ex. IX. Is the entry which has just been given in your handwriting?

Answer. It is not.

X-ex. X. Have you any recollection of that entry, or the matter of that entry, independent of this book?

Answer. Nothing except what that brings to my mind. I don't recollect about the entry, nor the fact of the entry, until I saw it in this book.

X-ex. XI. Have you any recollection of this entry being made independent of the book?

Answer. I have not.

ERASTUS J. EDGERTON.

Subscribed and sworn to before me this 17th August, A. D. 1861.

GEO. W. PRESCOTT,
Commissioner.

Defendants' counsel also offers in evidence the guarranty on the back of mortgage, marked Exhibit VI, which guarranty is
65 marked Exhibit VII.

And thereupon the said several parties in the said causes first above entitled declared that they had no more testimony to produce before me, the said commissioner heretofore named, and I accordingly return the foregoing testimony as the whole of the testimony, in connection with the exhibits therein testified to and hereto annexed introduced by said parties.

I certify also that the said parties, plaintiff and defendants, by their

counsel, appeared before me, at the time and place and in all respects as above set forth, pursuant to stipulation, and that the foregoing interrogatories and cross-interrogatories were proposed by the counsel for the several parties as above set forth, and were by me reduced to writing as they were severally propounded; that the answers of the witnesses were also by me reduced to writing as they were given to the said interrogatories and cross-interrogatories; that the questions and answers were then by me read to the witnesses, and were
66 thereupon signed by them; and that said witnesses were, previous to testifying, each duly sworn in said cause to depose the whole truth and nothing but the truth.

To all which witness my hand, this twenty-seventh day of August, A. D. 1861.

GEO. W. PRESCOTT,
Commissioner.

Commissioner's fees, $5 00.

Exhibit I.

$1,062$\frac{50}{100}$. SAINT PAUL, *April 27th*, 1857.

On the twenty-seventh day of May, 1858, (without grace,) for value received, I promise to pay to the order of Gardner P. Drury one thousand sixty-two and $\frac{50}{100}$ dollars, If not paid at maturity, to draw interest at the rate of twenty-five per cent. per annum until paid. Payable in Saint Paul with current rate of exchange on New York.

THOMAS FOSTER.

Indorsed on the back "Gardner P. Drury."

STATE OF MINNESOTA,
Ramsey County ss:

On the day of the date hereof I, Delos A. Montfort, notary public, residing in the city of St. Paul, by lawful authority duly com-
67 missioned and sworn, presented, at the request of the holder thereof, the original note hereto annexed at the office of the maker of said note, where the same is made payable, and demanded payment thereof, which was refused.

Whereupon, I, the said notary, did protest, and by these presents do solemnly protest, against the maker and endorser of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interest suffered, and to be suffered, for want of payment thereof.

And I do further certify, that on the day of the date hereof I served notices of the presentment and demand of payment of the said note and of the protest thereof as aforesaid for non-payment on the following named persons, parties to said note, by depositing the same in the post office in ———, directed to them at their reputed place of residence, and directed to the post office nearest to reputed place of residence, as follows:

On Thomas Foster, directed to him at Saint Paul.

On Gardner P. Drury, directed to him at Saint Paul.

68 On Alex. Ramsey, he having guarranteed the mortgage by which this note is secured, directed to him at Saint Paul.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, this twenty-seventh day of May, in the year one thousand eight hundred and fifty-eight.

[SEAL.] D. A. MONFORT,
Notary Public, Minnesota.

Exhibit II.

$1,062 50. SAINT PAUL, *April 27th*, 186 .

On the twenty-seventh day of May, 1859, (without grace,) for value received, I promise to pay to the order of Gardner P. Drury one thousand sixty-two $\frac{50}{100}$ dollars. If not paid at maturity, to draw interest at the rate of twenty-five per cent. per annum until paid. Payable in Saint Paul with current rate of exchange on New York.

THOMAS FOSTER.

Endorsed: Gardner P. Drury.

STATE OF MINNESOTA,
Ramsey County, ss:

69 On the day of the date hereof I, William Markoe, notary public, residing in the city of St. Paul, by lawful authority duly commissioned and sworn, presented, at the request of the holder thereof, the original note hereto annexed to Thomas Foster personally, where the same is made payable, and demanded payment thereof, which was refused.

Whereupon, I, the said notary, did protest, and by these presents do solemnly protest, against the maker and endorser of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interest, suffered and to be suffered, for want of payment thereof.

And I do further certify that on the day of the date hereof I served notices of the presentment and demand of payment of the said note, and of the protest thereof as aforesaid, for non-payment, on the following named persons, parties to said note, by depositing the same in the post office at St. Paul, directed to them at their reputed place of residence, and directed to the post office nearest to their reputed place of residence, as follows:

On Thomas Foster, directed to him at St. Paul, Minn.

On Gardner P. Drury, directed to him at St. Paul, Minn.

On Alexander Ramsey, as guarrantor on the mortgage, directed to him at St. Paul, Minn.

70 In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, this twenty-seventh day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.] WILLIAM MARKOE,
Notary Public, Minnesota.

Exhibit III.

$1,097 90. SAINT PAUL, *April 27th*, 1857.

On the 27th day of November next, (without grace,) for value received, I promise to pay to the order of Gardner P. Drury, one

thousand ninety seven & $\frac{00}{100}$ dollars. If not paid at maturity, to draw interest at the rate of twenty-five pr. cent. per annum until paid. Payable in Saint Paul with current rate of exchange on New York.

THOMAS FOSTER.

Fndorsed: Pay to the order of Mackubin & Edgerton, St. Paul, Minnesota.

GARDNER P. DRURY.

Pay Gardner P. Drury, or order, without recourse.

MACKUBIN & EDGERTON.

"Gardner Drury."

71 MINNESOTA,
Ramsey County, ss:

On the day of the date hereof I, Delos A. Montfort, notary public, residing in the city of Saint Paul, by lawful authority duly commissioned and sworn, presented, at the request of the holder thereof, the original note hereto annexed to the maker of said note, where the same is made payable, and demanded payment thereof, which was refused.

Whereupon I, the said notary, did protest, and by these presents do solemnly protest, against the maker and endorser of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interest suffered, and to be suffered, for want of payment thereof.

And do further certify, that on the day of the date hereof I served notices of the presentment and demand of payment of the said note, and of the protest thereof, as aforesaid, for non-payment, on the following named persons, parties to said note, by depositing the same in the post office in the city of Saint Paul, directed to them at their reputed place of residence, and directed to the post
72 office nearest to their reputed place of residence, as follows:

On Thomas Foster, directed to him at Saint Paul. On Gardner P. Drury, directed to him at Boston, Mass.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this 27th day of November, in the year one thousand eight hundred and fifty-seven.

D. A. MONFORT,
Notary Public, Minnesota.

Exhibit IIII.

$8,500 00. SAINT PAUL, *April 27th*, 1857.

Two years and one month from date, (without grace,) for value received, I promise to pay to the order of Gardner P. Drury, eight thousand five hundred dollars. If not paid at maturity to draw interest at the rate of twenty-five pr. cent. pr. annum until paid. Payable in Saint Paul with current rate of exchange on New York.

THOMAS FOSTER.

Endorsed: Gardner P. Drury.

STATE OF MINNESOTA,
County of Ramsey, ss:

73 On the day of the date hereof I, William Markoe, notary public, residing in the city of Saint Paul, by lawful authority duly commissioned and sworn, presented, at the request of the holder thereof the original note hereto annexed, to Thomas Foster personally, where the same is made payable, and demanded a payment thereof, which was refused.

Whereupon, I, the said notary, did protest, and by these presents do solemnly protest, against the maker and endorser of the said note, and the guarrantor on the mortgage to secure the same, and all others concerned, for all exchange, re-exchange, costs, damages, and interest suffered, and to be suffered, for want of payment thereof.

And I do further certify, that on the day of the date hereof I served notices of the presentment and demand of payment of the said note, and of the protest thereof, as aforesaid, for non-payment, on the following named persons, parties to said note, by depositing the same in the post office in St. Paul, directed to them at their reputed
74 place of residence, and directed to the post office nearest to their reputed place of residence, as follows:

On Thomas Foster, directed to him at St. Paul, Minn.

On Gardner P. Drury, directed to him at St. Paul, Minn.

On Alexander Ramsey, as guarrantor on the mortgage, directed to him at St. Paul, Minn.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, this twenty-seventh day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.] WILLIAM MARKOE,
Notary Public, Minnesota.

Exhibit V.

$1,062\frac{50}{100}$. ST. PAUL, *April 27th*, 1857.

On the twenty-seventh day of November, 1858, (without grace,) for value received, I promise to pay to the order of Gardner P. Drury one thousand sixty-two and $\frac{50}{100}$ dollars. If not paid at maturity, to draw interest at the rate of twenty-five per cent. per annum until paid. Payable in Saint Paul with current rate of exchange on New York.

THOMAS FOSTER.

75 Endorsed: Pay to the order of E. S. Edgerton.
GARDNER P. DRURY.

Pay Gardener P. Drury, or order, without recourse to
E. S. EDGERTON.

Gardner P. Drury.

STATE OF MINNESOTA,
County of Ramsey, ss:

On the day of the date hereof I, Geo. H. Edgerton, notary public, residing in the city of St. Paul, by lawful authority duly commissioned and sworn, presented, at the request of the holder thereof

the original note hereto annexed, at the office of the said Thomas Foster, where the same is made payable, and demanded payment thereof, which was refused.

Whereupon, I, the said notary, did protest, and by these presents do solemnly protest, against the maker and endorser of the said note, and all others concerned, for all exchange, re-exchange, costs, damages, and interests suffered, and to be suffered, for want of payment thereof.

And I do further certify, that on the day of the date hereof I served notices of the presentment and demand of payment of
76 the said note, and of the protest thereof as aforesaid, for non-payment, on the following named persons, parties to said note, by depositing the same in the post office in the city of Saint Paul, directed to them at their reputed place of residence, and directed to the post office nearest to their reputed place of residence, as follows:

On Gardner P. Drury, directed to him at Boston, Mass.

On Alex. Ramsey, directed to him Saint Paul, Minn.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, this twenty-seventh day of November, in the year one thousand eight hundred and fifty-eight.

GEO. H. EDGERTON,
Notary Public, Minnesota.

Exhibit VI.

This indenture, made this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and fifty-seven, between Thomas Foster and Hannah C. Foster, his wife, of the county of Dakota and Territory of Minnesota, parties of the first part, and Gardner P. Drury, of Massachusetts, party of the second part,
77 witnesseth: That the said parties of the first part, in consideration of the sum of twelve thousand seven hundred and eighty-five $\frac{40}{100}$ dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey to the said party of the second part, his heirs and asigns, forever, all that tract or parcel of land lying and being in said county of Dakota, described as follows, to wit: lots six (6) and seven (7) and the southwest quarter of the east quarter of section No. twenty-seven, in township No. one hundred and fifteen north, of range No. seventeen west, in the Red Wing land district: To have and to hold the same, together with all the hereditaments and appurtenances thereunto in anywise appertaining. And the said Thomas Foster and Hannah C. Foster, his wife, parties of the first part, do covenant with the said party of the second part, his heirs and assigns, as follows: First, they are lawfully seized of said premises; second, that they have good right to convey the same; third, that the same are free from all incumberances; and fourth,
78 that the said party of the second part, his heirs and assigns, shall quietly enjoy and possess the same, and that they will warrant and defend the title to the same against all lawful claims:

Provided, nevertheless, That if the said Thomas Foster and Hannah C. Foster, his wife, parties of the first part, their heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the said Gardner P. Drury, party of the second part, his executors, administrators, or assigns, the sum of twelve thousand seven hundred and eighty-five $\frac{40}{100}$ dollars, according to the conditions of said Thomas Foster's promissary notes, being five in number, bearing even date herewith, then this deed to be null and void; otherwise to be in full force and effect. But if default shall be made in the payment of said sum of money, or the interests or any part thereof, at the time hereinbefore specified for the payment thereof, the said parties of the first part in such case do hereby authorize and fully empower the said party
79 of the second part, his heirs, executors, administrators or assigns, to sell the said hereby granted premises at public auction, and convey the same to the purchaser in fee simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall be then due on the said notes, together with all the costs and charges, and pay the overplus (if any) to the said parties of the first part, their heirs, executors, administrators, or assigns.

And the said Thomas Foster and Hannah C. Foster, his wife, parties of the first part, do hereby further covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they will pay all taxes and assessments, of every nature, that may be assessed on said premises previous to the day appointed in pursuance of any law for the sale of lands for town, city, county, territorial or State taxes; and that if the said party of the second part shall have occasion to and shall commence a foreclosure of this mortgage deed, for condition broken, by a sale
79 as above provided, there shall be taxed, allowed, and paid to the said party of the second part an attorney or solicitor's fee of fifty dollars in addition to the fees allowed by law.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the day and year above written.

THOMAS FOSTER, [SEAL.]
HANNAH C. FOSTER. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. M. HAYES.
JAMES F. DICKEN.
OREN T. HAYES.

TERRITORY OF MINNESOTA,
County of Dakota, ss:

Be it known, that on this twenty-seventh day of April, A. D. 1857, before me personally appeared Thomas Foster and Hannah C. Foster, his wife, the signers and sealers of the foregoing deed, and acknowledged the signing and sealing thereof to be their voluntary act and deed, for the uses and purposes expressed.

And the said Hannah C. Foster, wife of the said Thomas
80 Foster, being examined separate and apart from her said husband, and the contents of the foregoing deed made known to

her by me, she then acknowledged that she executed the same freely, and without fear or compulsion from any one.

A. M. HAYES, [SEAL.]
Notary Public for Minnesota Territory.

Mortgage deed.—Thomas Foster and wife to Gardner P. Drury.

OFFICE OF REGISTER OF DEEDS,
County of Dakota.

I hereby certify that the within deed was filed in his office for record on the twenty-fifth day of May, at 10 o'clock a. m., and was duly recorded in book "D" mgs., pages 188, 189, and 190.

JOHN KENNEDY,
Register of Deeds.

81 *Exhibit VII.*

For value received, I hereby guarrantee that the property described in the within mortgage will sell for enough to pay the note and interest accompanying said mortgage, at any time said mortgage may be foreclosed after maturity.

ALEX. RAMSEY.

ST. PAUL, *May* 21, 1857.

82 And afterwards, to wit, on the twenty-fifth day of April, in the year eighteen hundred and sixty-two, came the said plaintiff, Gardner P. Drury, by his said solicitors, and filed in the clerk's office of said court, at St. Paul, his petition for appeal in the words and figures following, to wit:

GARDNER P. DRURY, plaintiff,
vs.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, and WILLIAM L. BANNING, defendants. } Original suit.

THOMAS FOSTER and HANNAH C. FOSTER, his wife, plaintiffs and appellees,
vs.
GARDNER P. DRURY, defendant and appellant. } Cross-suit.

To the honorable the Supreme Court of the United States:

The petition of appeal of Gardner P. Drury, defendant in above-named cross-suit, and appellant, respectfully showeth, that
83 heretofore, to wit, at the October term of the year A. D. 1861, of the district court of the United States for the district of Minnesota, a final decree was rendered by said court, sitting in equity, in a certain cross-suit, above named, therein pending, wherein your petitioner was defendant, and Thomas Foster and Hannah C. Foster, his wife, were plaintiffs, which said decree is wholly erroneous and ought to be reversed, as your petitioner is advised.

Provided, nevertheless, That if the said Thomas Foster and Hannah C. Foster, his wife, parties of the first part, their heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the said Gardner P. Drury, party of the second part, his executors, administrators, or assigns, the sum of twelve thousand seven hundred and eighty-five $\frac{40}{100}$ dollars, according to the conditions of said Thomas Foster's promissary notes, being five in number, bearing even date herewith, then this deed to be null and void; otherwise to be in full force and effect. But if default shall be made in the payment of said sum of money, or the interests or any part thereof, at the time hereinbefore specified for the payment thereof, the said parties of the first part in such case do hereby authorize and fully empower the said party
79 of the second part, his heirs, executors, administrators or assigns, to sell the said hereby granted premises at public auction, and convey the same to the purchaser in fee simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall be then due on the said notes, together with all the costs and charges, and pay the overplus (if any) to the said parties of the first part, their heirs, executors, administrators, or assigns.

And the said Thomas Foster and Hannah C. Foster, his wife, parties of the first part, do hereby further covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they will pay all taxes and assessments, of every nature, that may be assessed on said premises previous to the day appointed in pursuance of any law for the sale of lands for town, city, county, territorial or State taxes; and that if the said party of the second part shall have occasion to and shall commence a foreclosure of this mortgage deed, for condition broken, by a sale
79 as above provided, there shall be taxed, allowed, and paid to the said party of the second part an attorney or solicitor's fee of fifty dollars in addition to the fees allowed by law.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the day and year above written.

THOMAS FOSTER. [SEAL.]
HANNAH C. FOSTER. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. M. HAYES.
JAMES F. DICKEN.
OREN T. HAYES.

TERRITORY OF MINNESOTA,
County of Dakota, ss:

Be it known, that on this twenty-seventh day of April, A. D. 1857, before me personally appeared Thomas Foster and Hannah C. Foster, his wife, the signers and sealers of the foregoing deed, and acknowledged the signing and sealing thereof to be their voluntary act and deed, for the uses and purposes expressed.

And the said Hannah C. Foster, wife of the said Thomas
80 Foster, being examined separate and apart from her said husband, and the contents of the foregoing deed made known to

her by me, she then acknowledged that she executed the same freely, and without fear or compulsion from any one.

A. M. HAYES, [SEAL.]
Notary Public for Minnesota Territory.

Mortgage deed.—Thomas Foster and wife to Gardner P. Drury.

OFFICE OF REGISTER OF DEEDS,
County of Dakota.

I hereby certify that the within deed was filed in his office for record on the twenty-fifth day of May, at 10 o'clock a. m., and was duly recorded in book "D" mgs., pages 188, 189, and 190.

JOHN KENNEDY,
Register of Deeds.

81 *Exhibit VII.*

For value received, I hereby guarrantee that the property described in the within mortgage will sell for enough to pay the note and interest accompanying said mortgage, at any time said mortgage may be foreclosed after maturity.

ALEX. RAMSEY.

ST. PAUL, *May* 21, 1857.

82 And afterwards, to wit, on the twenty-fifth day of April, in the year eighteen hundred and sixty-two, came the said plaintiff, Gardner P. Drury, by his said solicitors, and filed in the clerk's office of said court, at St. Paul, his petition for appeal in the words and figures following, to wit:

GARDNER P. DRURY, plaintiff,
vs.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, and WILLIAM L. BANNING, defendants. } Original suit.

THOMAS FOSTER and HANNAH C. FOSTER, his wife, plaintiffs and appellees,
vs.
GARDNER P. DRURY, defendant and appellant. } Cross-suit.

To the honorable the Supreme Court of the United States:

The petition of appeal of Gardner P. Drury, defendant in above-named cross-suit, and appellant, respectfully showeth, that
83 heretofore, to wit, at the October term of the year A. D. 1861, of the district court of the United States for the district of Minnesota, a final decree was rendered by said court, sitting in equity, in a certain cross-suit, above named, therein pending, wherein your petitioner was defendant, and Thomas Foster and Hannah C. Foster, his wife, were plaintiffs, which said decree is wholly erroneous and ought to be reversed, as your petitioner is advised.

And that the matter thereby in dispute, exclusive of costs, exceeds the sum of two thousand dollars.

Wherefore, this appellant appeals, from the said decree of the said court, to the Supreme Court of the United States next to be holden at the city of Washington, in the District of Columbia, and prays that the said decree, and a transcript of the bill of complaint, answer, pleadings, depositions, evidence, and all other proceedings of what kind soever, in the said cross-suit, may be duly transmitted to the said Supreme Court, and that said Supreme Court may receive, hear, and determine said appeal, and that the said decree may be reversed, and that such other or further order and decree may be made by the said Supreme Court in the premises as the nature of the case
84 may require and as may be agreeable to equity, and that this appellant may be restored to all things which he hath lost by the said decree. And this appellant will ever pray, &c.

HALE & BOND, *Solicitors.*
ALLIS & PECKHAM,
Of Counsel for Def't & Appellant.

And afterwards, to wit, on the twenty-fifth day of April, A. D. eighteen hundred and sixty-two, came the said plaintiff, by his said solicitors, and filed in the said clerk's office at St. Paul, the following order, to wit:

District court of the United States for the district of Minnesota.

GARDNER P. DRURY, plaintiff, *vs.* THOMAS FOSTER and HANNAH C. FOSTER, his wife, and WILLIAM L. BANNING, defendants.	Original suit.
THOMAS FOSTER and HANNAH C. FOSTER, his wife, plaintiffs, *vs.* GARDNER P. DRURY, defendant.	Cross-suit. In equity.

85 In this cause, this 25th day of April, A. D. 1862, came the defendant in the above cross-suit, by his solicitors, Messrs. Hale & Bond, and exhibiting his petition, praying for an appeal to the Supreme Court of the United States next to be holden at the city of Washington, in the District of Columbia, on the first Monday of December, A. D. 1862, from the final decree heretofore rendered in said cross-suit, and showing that the matter in dispute, exclusive of costs, exceeds the sum of two thousand dollars, and furnishing the security required by law, moved that an appeal be allowed in accordance with the prayer of the said petition; and thereupon, it is ordered that the appeal prayed for be, and the same is hereby, allowed, and that the appellant serve the usual citation according to law.

R. R. NELSON,
United States Judge.

86 UNITED STATES OF AMERICA,
District of Minnesota, ss:

And now, to wit, at a stated term of the district court of the United States for the district of Minnesota, held at Saint Paul on the first Monday of October, in the year one thousand eight hundred and sixty-two, on the first day of said term, it was ordered, that the record in this cause, together with others, be, and the same is hereby, transfered to the circuit court of the United States for the district of Minnesota, in pursuance of an act of the Congress of the United States approved July 15, 1862, entitled "An act to amend an act of the third of March, A. D. 1837, entitled An act supplementary to an act entitled An act to amend the judicial system of the United States.

87 UNITED STATES of AMERICA,
Circuit Court of the United States for the District of Minnesota, ss:

I, H. E. Mann, clerk of said court for the district of Minnesota, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing is a true and complete transcript of the record, process, pleadings, orders, final decree, and all other proceedings in said cause, and also of all the depositions, exhibits, and proofs taken therein, as appears from the original records and files of said court. And I do further certify and return that I have annexed to said transcript, and do hereby transmit therewith, the original citation of appeal, together with the proof of the service thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court at Saint Paul, in the district aforesaid, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

[SEAL.] H. E. MANN, *Clerk.*
By J. N. CARDOZO, *Deputy Clerk.*

Filed December 30, 1862.